IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1243 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT DEVELOPMENT OFFICER & 1 - Petitioner(s)

Versus

SAIYED MUSTAQALI MAHBUBALI C/O.GENERAL WORKEN'S UNION - Respondent(s)

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Appearance :

MR SUNIL S JOSHI for Petitioner No(s).: 1,2.

DS AFF.NOT FILED (R) for Respondent No(s).: 1.

MR MAHENDRA K PATEL for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 14/07/2005

ORAL JUDGMENT

Heard Shri Sunil S. Joshi, learned advocate for the petitioners and Shri Mahendra Patel, learned advocate for the respondents.

2. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and award passed by the Labour Court, Godhra, dated 22.9.2004 in Reference (LCG) No. 375 of 1994 by which the Labour Court has directed the petitioners to reinstate the respondent workman with continuity in service and to pay 50% of backwages from 23.11.1994.

3. Initially, it was the case of the respondents that he was serving in the Office of Statistical Office and his services were terminated with effect from 16.6.1994 and he was serving as “Typist' thereafter he accordingly raised industrial dispute on that basis. The dispute referred to the Labour Court, Godhra for adjudication came to be numbered as Reference (LCG) No. 375 of 1994. It appears from the record that during the pendency of the aforesaid Reference the respondent workman approached the Assistant Labour Commissioner, Godhra for modification of the terms of Reference and at the instance of the respondent workman the name of District Statistical Officer came to be deleted and the claim of the respondent workman was against District Development Officer, Panchmahals at Godhra and Executive Engineer, Minor Irrigation and instead of the date of termination of 16.6.1994 it was requested to change the same to 1.5.1991. It appears from the record that by order dated 18.5.2001, the Assistant Labour Commissioner, Godhra, modified the

terms of Reference and directed to amend the date of termination as 1.5.1991 instead of 16.6.1994 and permitted the respondent workman to delete District Statistical Officer, District Panchayat, Panchmahals. Thereafter the Reference came to be decided and disposed of by the Labour Court, Godhra, by judgment and award dated 22.9.2004 and only on the basis of the affidavit of the respondent workman at Exh. 79 and a xerox copy of the worksheet Exh. 80 which was prepared by the respondent workman, the Labour Court holding that the respondent workman has completed 240 days in the last preceding year and that there is breach of Section 25(F) of The Industrial Disputes Act, 1947 {“the I.D. Act” for short} partly allowed the aforesaid Reference by directing the petitioners to reinstate the respondent with 50% backwages from 23.11.2004. Being aggrieved and dissatisfied with the said judgment and award dated 22.9.2004 passed in Reference (LCG) No. 375 of 1994, the petitioners have preferred the present petition under Articles 226/227 of the Constitution of India.

4. Shri Sunil Joshi, learned advocate appearing on behalf of the petitioners has vehemently submitted that except the Affidavit of the respondent workman at Exh.79 and the copy of the Worksheet Exh.80 prepared by the respondent workman himself there is no other documentary evidence produced on behalf of the respondent workman to prove that he has worked for 240 days and therefore there is breach of Section

25(F) of the ID Act. He has relied upon the decisions of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan, & Another reported in (2004) 8 SCC Page 161; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas, reported in (2004) 8 SCC Page 195; and the recent decision of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, reported in 2005 AIR Supreme Court Weekly 3160 in support of his aforesaid submission and requested to allow the present Special Civil Application.

5. Per contra, Shri Mahendra K. Patel, learned advocate appearing on behalf of respondent workman has tried to support the judgment and award of the Labour Court, Godhra and its finding. He has submitted that from the document copy of Worksheet at Exh. 80 prepared on the basis of Muster Roll it is proved beyond doubt that he has completed 240 days in the preceding year. He has also further submitted that in fact there were two certificates issued by the officers to show that he has worked with the petitioners and therefore while considering the aforesaid two certificates when the Labour Court has held that the respondent workman has completed 240 days in the last preceding year it cannot be said that there is no evidence whatsoever produced by the respondent workman to prove that he has worked for 240 days and so submitting requested to dismiss the

present Special Civil Application.

6. I have gone through the judgment and award passed by the Labour Court as well as the documentary evidence produced before the Labour Court. So far as the Worksheet at Exh. 80 upon which reliance has been placed by the Labour Court is concerned, it cannot be said that it is a conclusive and sufficient evidence to prove that the respondent workman has worked for 240 days in the last preceding year. The said worksheet is only a statement prepared by the respondent workman on his own not supported by any documentary evidence. In those circumstances the Labour Court has materially erred in relying upon the said document Exh.80. So far as the certificates issued by the Officers of the petitioners upon which reliance has been placed are concerned, one certificate which is at Exh. 35 dated 30th September 1988 of this compilation shows that the respondent workman had worked as 'English Typist' from 15.4.1987 to 26.9.1988. Not only that the said certificate is not relating to the last preceding year, but by the said certificate it cannot be proved by the respondent workman that he has worked for 240 days. So far as another certificate, which is relied upon and a copy whereof is at Page 36 of the compilation, is concerned, it is required to be noted that the said certificate is dated 5.5.1993 issued by the District Statistical Officer. It is required to be noted that the case and the claim of the respondent

workman is not against the District Statistical Officer, but the claim of the respondent workman is against the Executive Engineer, Minor Irrigation and on the contrary the respondent workman has requested the Assistant Labour Commissioner to delete the District Statistical Officer from the Reference and his claim against District Statistical Officer. Therefore the said certificate dated 5.5.1993 issued by the District Statistical Officer cannot prove that he has worked for 240 days with Executive Engineer, Minor Irrigation. Except the aforesaid documentary evidence there is no other evidence produced by the respondent workman to prove that he has worked for 240 days in the last preceding year. It is the contention on behalf of the respondent workman that the petitioners had not produced any evidence to prove that the respondent workman has not worked for 240 days in the last preceding year. Considering the judgment of the Hon'ble Supreme Court in the case of *Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another, (supra)* and in the case of *Municipal Corporation, Faridabad (supra),* the burden is upon the workman to show and prove that he has continuously worked for 240 days in the preceding year prior to his alleged retrenchment and even it is held by the Hon'ble Supreme Court in those case that even non-production of any muster roll by the employee cannot lead to adverse inference in favour of the workman that he has completed 240 days, it is ultimately for the workman to adduce documentary evidence to prove that he has worked for 240 days.

In the present case, as stated above, there is no documentary evidence produced on behalf of the respondent workman to prove that he has worked for 240 days in the last preceding year. Under the circumstances the finding arrived at by the Labour Court, Godhra to the effect that the respondent workman has completed 240 days in the preceding year and that there is breach of Section 25(F) of the ID Act is not based on evidence and considering the aforesaid two decisions of the Hon'ble Supreme Court the same is required to be quashed and set aside and the same is quashed and set aside. The matter is remanded to the Labour Court, Godhra, for deciding the Reference No. (LCG) No. 375 of 1994 afresh and it will be open for the respondent workman to produce documentary evidence and to prove that he has worked for 240 days in the last preceding year.

7. For the reasons stated above, the petition succeeds. The judgment and award dated 22.9.1994 is hereby quashed and set aside. The matter is remanded to the Labour Court for deciding the Reference (LCG) No. 375 of 1994 afresh and considering documentary evidence that may be produced on behalf of the respondent workman that he has worked for 240 days in the preceding year and the Labour Court is directed to consider the decisions of the Hon'ble Supreme

Court which are referred to hereinabove. Rule is made absolute with no order as to costs.

RMR. *[M.R. Shah, J.]*